

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SHANNON R. POWELL,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendants.

No. 2:24-cv-00030-DAD-CKD (PS)

ORDER AND AMENDED FINDINGS AND
RECOMMENDATIONS

Plaintiff, who proceeds without counsel, initiated this action with a complaint filed in the Sacramento County Superior Court. (See ECF No. 1.) This matter is before the undersigned pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302(c)(21). For the reasons set forth below, the undersigned vacates the findings and recommendations entered March 5, 2024, and issues these amended findings and recommendations concluding plaintiff's complaint should be dismissed for lack of subject matter jurisdiction, or, in the alternative, for failure to state a claim.

I. Background

Plaintiff initiated this action in the Sacramento County Superior Court with a civil complaint alleging a total of seven words, stating as follows: "Terrorism Religious Rights Rape Imprisonment Faud [sic] Murder." (ECF No. 1-1 at 2.)

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1 On January 4, 2024, defendant, the United States of America, removed the case under 28
2 U.S.C. § 1442(a)(1). (ECF No. 1 at 2.) On January 12, 2024, defendant filed a motion to dismiss
3 for lack of subject matter jurisdiction or, in the alternative, for failure to state a claim. (ECF No.
4 3.)

5 Plaintiff did not file a timely opposition to the motion to dismiss. On February 6, 2024,
6 the court provided plaintiff a further opportunity to oppose the motion to dismiss within 14 days
7 after service of the court's order. (ECF No. 4.) Plaintiff was cautioned that failure to respond
8 would be construed as non-opposition to the motion which would constitute grounds for
9 dismissal. (Id.) Plaintiff failed to oppose the motion to dismiss or otherwise respond to the court's
10 order dated February 6, 2024. Accordingly, on March 5, 2024, the undersigned recommended this
11 action be dismissed for plaintiff's failure to prosecute. (ECF No. 6.)

12 Plaintiff filed objections to the recommendation to dismiss this action for failure to
13 prosecute. (ECF Nos. 7, 8.) On March 21, 2024, the court provided plaintiff a further opportunity
14 to respond to the pending motion to dismiss within 14 days after service of the court's order.
15 (ECF No. 9.)

16 Plaintiff served an opposition to defendant's counsel. (See ECF No. 10-1 at 4.) The
17 opposition states the following:

18 I cannot and will not allow my lawsuit against the United States to
19 come to a dead end. [T]here are Judges, Attorneys, Police Officers
20 and their family and friends, in the way of wrong with my rights and
21 my life. [T]he court must allow this suit to go forward my life cannot
22 be for them to come in our leadership chairs and lead our
23 grandchildren in the way of wrong[.]

24 (Id.) Plaintiff did not file the opposition with the court.

25 The undersigned has considered plaintiff's opposition to the motion to dismiss and issues
26 these amended findings and recommendations. The complaint should be dismissed for lack of
27 subject matter jurisdiction, or, in the alternative, for failure to state a claim.

28 **II. The Court Lacks Subject Matter Jurisdiction**

29 As set forth, the complaint alleges "Terrorism Religious Rights Rape Imprisonment Faud
30 [sic] Murder." (ECF No. 1-1 at 2.) Defendant argues the court lacks subject matter jurisdiction

1 under the derivative jurisdiction doctrine and because the complaint clearly alleges torts but fails
2 to allege compliance with the administrative claim requirement of the Federal Tort Claims Act.
3 (ECF No. 3-1 at 3-4.)

4 Federal courts assume subject-matter jurisdiction is lacking unless and until the party
5 asserting jurisdiction demonstrates otherwise. Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375,
6 376 (1994). Where subject-matter jurisdiction is found to be lacking, the claim or lawsuit must be
7 dismissed at the first instance. See Fed. R. Civ. P. 12(h)(3).

8 The United States is immune from suit for damages except where Congress has
9 specifically waived its immunity. See Lehman v. Nakshian, 453 U.S. 156, 160 (1981). The
10 Federal Tort Claims Act (“FTCA”) contains a limited waiver of sovereign immunity. 28 U.S.C. §
11 1346(b). It also provides federal district courts with exclusive subject-matter jurisdiction over
12 civil actions against the United States for money damages for personal or property damage caused
13 by the negligent or wrongful act or omission of any federal employee acting within the scope of
14 their office or employment if a private person would be liable to the plaintiff under the laws of the
15 place where the challenged conduct occurred. 28 U.S.C. § 1346(b).

16 The FTCA does not include a waiver of sovereign immunity for suits brought in state
17 courts. See Rodriguez v. United States, 788 Fed. Appx. 535, 536 (9th Cir. 2019) (citing Cox v.
18 U.S. Dep’t of Agric., 800 F.3d 1031, 1031 (9th Cir. 2015) (per curiam)). The derivative
19 jurisdiction doctrine provides that, if a state court lacks jurisdiction over a case, a federal court
20 does not acquire jurisdiction upon removal. Minnesota v. United States, 305 U.S. 382, 389
21 (1939). The doctrine applies to removals under 28 U.S.C. § 1442(a). Cox, 800 F.3d at 1032
22 (citing In re Elko Cty. Grand Jury, 109 F.3d 554, 555 (9th Cir. 1997)).

23 Because this suit was removed under 28 U.S.C. § 1442(a)(1), and because the state court
24 did not have jurisdiction, this court acquired no jurisdiction upon removal. See Cox, 800 F.3d at
25 1032; Glass v. Nat’l R.R. Passenger Corp., 570 F. Supp. 2d 1180, 1182 (C.D. Cal. 2008) (“the
26 doctrine of ‘derivative jurisdiction,’ if applicable here, would preclude this Court from having
27 jurisdiction, even if the matter could have been raised here originally”).

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1 Moreover, under the FTCA, a plaintiff must comply with an administrative claim
2 procedure prior to bringing suit. Failure to do so is a jurisdictional defect that requires dismissal
3 of the complaint. See McNeil v. United States, 508 U.S. 106, 113 (1993) (“The FTCA bars
4 claimants from bringing suit in federal court until they have exhausted their administrative
5 remedies.”).

6 Here, there are no factual allegations that permit the court to conclude that plaintiff
7 complied with the administrative claim procedure of the FTCA or that some other waiver of
8 sovereign immunity applies. In this way, too, plaintiff fails to establish the court’s jurisdiction,
9 and the suit must be dismissed. See Fed. R. Civ. P. 12(h)(3).

10 **III. The Complaint Fails to State a Claim**

11 The complaint also fails to state a claim. (ECF No. 3-1 at 4.) Dismissal is warranted
12 because there is both a “lack of a cognizable legal theory [and an] absence of sufficient facts
13 alleged under a cognizable legal theory.” Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699
14 (9th Cir. 1990).

15 Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a “short and plain
16 statement of the claim showing that the pleader is entitled to relief.” Labels and conclusions are
17 insufficient to state a claim, as are formulaic recitations of the elements of a cause of action.
18 Ashcroft v. Iqbal, 556 U.S. 662, 677-78 (2009).

19 Here, the complaint fails to plead any facts at all. The alleged perpetrators and alleged
20 victims of the purported wrongs are not identified. The dates and events that purportedly led to
21 the alleged harms are also not identified. The complaint plainly fails to meet the required pleading
22 standard. See Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 557 (2007) (“naked assertion[s]”
23 devoid of “further factual enhancement” do not suffice).

24 Plaintiff was put on notice of the deficiency of the complaint’s lack of factual allegations
25 through the pending motion to dismiss. Plaintiff does not, however, indicate there are any further
26 facts which could be alleged to state a plausible claim. Thus, it appears granting leave to amend
27 would be futile. See California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d 1466,
28 1472 (9th Cir. 1988) (“Valid reasons for denying leave to amend include undue delay, bad faith,

1 prejudice, and futility."); see also Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau,
2 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the
3 court does not have to allow futile amendments).

4 **IV. Order and Recommendation**

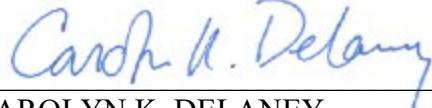
5 In accordance with the above, IT IS HEREBY ORDERED that the findings and
6 recommendations entered March 5, 2024 (ECF No. 6) are VACATED, and the undersigned
7 issues these amended findings and recommendations.

8 IT IS HEREBY RECOMMENDED as follows:

9 1. Defendant's motion to dismiss (ECF No. 3) be GRANTED;
10 2. This action be DISMISSED without leave to amend for lack of subject matter
11 jurisdiction, or, in the alternative, for failure to state a claim; and
12 3. The Clerk of the Court be directed to CLOSE this case.

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
15 days after being served with these findings and recommendations, any party may file written
16 objections with the court and serve a copy on all parties. Such a document should be captioned
17 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
18 shall be served on all parties and filed with the court within seven (7) days after service of the
19 objections. The parties are advised that failure to file objections within the specified time may
20 waive the right to appeal the District court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir.
21 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

22 Dated: April 29, 2024


23 CAROLYN K. DELANEY
24 UNITED STATES MAGISTRATE JUDGE

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